HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.535 of 2007

Between:

Vadkevu Kameswari Sivaji and 11 others

... Appellants

And

The District Collector,
Visakhapatnam and another

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri D.V. Sitharam Murthy

Counsel for the respondents : Assistant Government Pleader for Revenue

June 28, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 18-12-2006 passed by the learned Single Judge in Writ Petition No. 20444 of 2006, whereby he declined to entertain the appellants prayer for restraining the respondents from dispossessing them from plots bearing Nos. 37, 38 61, 62, 43, 98, 8, 99, 100, 33, 34, 6, 7, 41, 39, 40, 41, 42 comprised in Survey Nos. 22/1B, 9/1A, 1B, 1C and 17/1 of Mudasarlova Village, Chinagadili Mandal, Visakhapatnam District.

Shri D.V. Sitharam Murthy, learned counsel appearing for the appellants referred to order dated 11-9-2006 passed by the learned Single Judge in Writ Petition No. 17515 of 2006, **Smt. Penumatsa**

Venkata Satya Varalakshmi v. the Commissioner, Greater Visakhapatnam Municipal Corporation, Visakhapatnam and others and argued that after having protected possession of the petitioners of that case, who are in possession of the plots in Survey Nos.9/1A and 9/1C situated in Mudasarlova Village, Chinagadili Mandal, and directing that they shall not be dispossessed except after following due process of law and issuing them notice, the learned Single Judge ought to have granted similar relief to the appellants. Learned counsel emphasised that his clients have been in continuous possession of the land and the respondents or the authorities of the Central Reserved Police Force (CRPF) should not be permitted to take law into their own hands and forcibly dispossess the appellants.

Learned Assistant Government Pleader for Revenue fairly stated that the land out of which the appellants claim to have carved out the plots comprised in some of the same survey numbers which are subject matter of Writ Petition No. 17515 of 2006, but tried to distinguish order passed in that case by saying that the claim made by the appellants over the land in question has already been rejected by various authorities including Collector, Visakhapatnam and possession had been handed over to CRPF. He then submitted that pendency of appeal preferred by the appellants against order dated 12.1.2006 passed by the Collector in S.R.No.11(pro) 1 to 28/2005 cannot entitle the appellants to claim protection of their possession. Simultaneously, he submitted that in order to maintain equality between similarly situated persons, the Court may direct disposal of the appeal pending before Commissioner of Appeals and protect the status quo as it is obtaining today.

In view of the fair stand taken by the learned Assistant Government Pleader, we do not consider it necessary to deal with the issues raised in the appeal on merits and dispose of the same in the following terms:

1) The appeal filed by the appellants against order dated

12-1-2006 passed by Collector, Visakhapatnam shall be disposed of by Commissioner of Appeals as early as possible, but latest within a period of two months from today.

2) If the appeal preferred by the appellants is allowed, then nothing more will be required to be done and they shall be entitled to enjoy the property and its possession.

3) If the appeal preferred by the appellants is dismissed, then the order passed by the appellate authority shall not be given effect to for a period of two weeks and within that period, the appellants shall be free to avail appropriate legal remedy.

4) Till the decision of the appeal and for next 15 days, the parties shall maintain status quo in respect of the disputed land, as it is obtaining today. This would necessarily mean that if the appellants are in possession of the property as on today, then their possession shall not be disturbed. If, on the other hand, possession has already been taken over by CRPF, then the authorities of that organisation shall not alter the character of the property in any manner whatsoever.

As a sequel to disposal of the appeal, WAMP No.1039 of 2007 filed by the appellants is disposed of as infructuous.

G.S. SINGHVI, CJ

June 28, 2007

C.V. NAGARJUNA REDDY, J

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